

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges a series of accidents resulting in injuries to his right shoulder and back during the period beginning June 19, 1996, and continuing each and every working day thereafter. The September 16, 1997, preliminary hearing concerned only the back injury.

The Appeals Board has limited jurisdiction on appeals from preliminary hearing orders. The Appeals Board may review allegations that an administrative law judge exceeded his or her jurisdiction, including allegations that the administrative law judge erred on jurisdictional issues listed in K.S.A. 44-534a, as amended. However, every allegation of error does not constitute a jurisdictional issue. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

The workers compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injury arising out of and in the course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 44-534a, as amended, as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are also designated as jurisdictional issues under K.S.A. 44-534a, as amended. Whether the administrative law judge should, in a given set of circumstances, authorize temporary total disability compensation is not a question that goes to the jurisdiction of the administrative law judge. K.S.A. 44-534a, as amended, specifically grants an administrative law judge the authority to decide issues concerning the payment of temporary total disability compensation at a preliminary hearing. Therefore, the Administrative Law Judge did not exceed his jurisdiction.

The respondent may preserve the issue for final award as provided by K.S.A. 44-534a(a)(2), as amended. That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

WHEREFORE, the Appeals Board finds and concludes that the appeal by the respondent and its insurance carriers should be dismissed as the Appeals Board is without jurisdiction to consider the issue raised and the Order by Administrative Law Judge John D. Clark, dated September 16, 1997, should, and does remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director